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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,146	06/14/2002	Mark A. Kappel	126063	3242
27256	7590	01/31/2005	EXAMINER	
ARTZ & ARTZ, P.C. 28333 TELEGRAPH RD. SUITE 250 SOUTHFIELD, MI 48034			PHAN, THIEM D	
			ART UNIT	PAPER NUMBER
			3729	

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/064,146

Applicant(s)

KAPPEL ET AL.

Examiner

Tim Phan

Art Unit

3729

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1-13.Claim(s) withdrawn from consideration: None.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 5 (1 of 2):

Applicants' remarks filed on January 19th 2005 re-traversing Claims 1-13 are hold not to be persuasive for the following reasons:

Applicants' recitation "The Examiner fails to point out a channel through the piston assembly" (Cf. Remarks, page 2, line 9; Claim 1, line 3) is inaccurate. Applicants are advised to see attached Figure 5, below, where the piston assembly includes elements 52, 15, 42, 44, 66 and 20 with a channel therethrough.

Applicants urge "... the cross member does not include a post head sized to be received within a refraction member." (Cf. Remarks, page 2, lines 11 & 12). The '281 does teach an extracting tool which comprises a cross member (Cf. Fig. 2, 20) where a post-head (Cf. Fig. 1 & 3, 42a) sized or moved to be received within during the refraction or compression phase or feature as claimed.


Applicants' remarks "The Examiner also fails to point out where slots exist in the Omand reference." (Cf. Remarks, page 2, line 16) and "... Applicants respectfully submit that both a slot and a channel are not illustrated." (Cf. Remarks, page 2, line 27). Applicants are advised to see attached Figure 5 below where the slot and channel are indicated.


Applicants' citations " The Examiner also states on page 3 of the Final Action that Fig. 5, reference numeral 15, shows that the piston is fed through without fixation" (Cf. Remarks, page 2, lines 29 & 30). This statement is inaccurate since the Examiner never stated that instead the Examiner urges that the '282 teaches the limitation of sliding reception of the piston (Cf. Fig. 4, 15) through the entire cross-member without fixation or being stopped.

Further Applicants' remarks "... the Examiner has at least failed to show both a slot and a channel ... as recited in claim 1." (Cf. Remarks, page 3, lines 2-4). Applicants are advised again to see attached Figure 5 below where the slot and channel are indicated.

Moreover Applicants' argument about hindsight reasoning " ... it would have been obvious for the placement of the spring ... the placement of the spring is being moved in hindsight based ..." (Cf. Remarks, page 3, lines 6-10) is unpersuasive. In response to applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicants fail to recognize the scope of the claims when judged in view of Michel (US 3,903,581). (Cf. MPEP 2111 and *In re Geuns*, 26 USPQ 2nd 1057 (Fed. Cir. 1993)).

  
CARL J. ARBES  
PRIMARY EXAMINER

  
Tim Phan  
Examiner  
Art Unit 3729

tp  
January 28, 2005

Attachment: Figure 5

U.S. Patent

Apr. 28, 1987

Sheet 3 of 3

4,660,281

Continuation of 5 (2 of 2):

